

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6864 OF 2015**

D. N. Samant

..Petitioner

Vs.

N. K. Thakkar & Anr.

..Respondents

Mr. B. C. Joshi for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 17th OCTOBER, 2015

P.C.

1 The Writ Jurisdiction of this court is invoked against the order dated 21-2-2015 passed by the Learned Civil Judge Senior Division, Thane, by which order, the application Exhibit 109 filed by the Petitioner original Defendant No.1 in the suit in question which is filed under Order XXXVII of the Civil Procedure Code for a no Written Statement order passed against the Defendant No.2 in counter claim, came to be rejected.

2 The Petitioner herein is the Defendant No.1 who has filed the counter claim in which he has arrayed Nanjibhai Khimjibhai Thakkar Thanawala as the Defendant No.2 to the said counter claim. The Written Statement to the counter claim has been filed on behalf of the Plaintiff by one Nanjibhai Khimjibhai Thakkar Thanawala and in the verification clause it has been stated that he has filed in the capacity of Managing Trustees and

Chairman of Sheth T. J. Education Society and N. K. T. Thanawala Educational Charitable Trust.

2 In view thereof the Trial Court has held that the reliefs vide the said application Exhibit 109 could not be granted. The Trial Court has further observed that the said Written Statement filed on behalf of the said parties have been read and recorded in the Suit and therefore rejected the application.

3 It is required to be noted that the Defendant No.1 i.e. the Petitioner herein proceeded with the Suit and the Suit is part heard and it is for the evidence of the Defendants. It is at the said stage that the instant application came to be filed for passing a No Written Statement order against the Defendant No.1.

4 In my view, having regard to the verification clause of the Written Statement filed by the said Nanjibhai Khimjibhai Thakkar Thanawala, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]